IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 580 of 2003
with
CIVIL APPLICATION No 8599 of 2003

AND

SPECIAL CIVIL APPLICATION No 1703 of 2003
with
CIVIL APPLICATION No 5901 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JITENDRABHAI CHUNIBHAI PATEL
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 580 of 2003
MR KG VAKHARIA with MR TUSHAR MEHTA for Petitioner No. 1-4
MR KAMAL B TRIVEDI, ADDL. ADVOCATE GENERAL with
Ms SANGITA VISHEN, AGP for Respondent No. 1-2,4
MR SK JHAVERI for Respondent No. 3
MR PY DIVYESHVAR for Respondent No. 3
MS JIRGA D JHAVERI for Respondent No. 3

MR SHALIN N MEHTA for Respondent No. 5-8
MR DILIP B RANA for Respondent No. 9-11
MR PK JANI for Respondent No. 12-14

2. Special Civil Application No. 1703 of 2003

M/S THAKKAR ASSOC. for Petitioner No. 1-4
MR KAMAL B TRIVEDI, ADDL. ADVOCATE GENERAL with
Ms SANGITA VISHEN, AGP for Respondent No. 1-3
MR PK JANI for Respondent No. 4-6

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 09/07/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Both these petitions under Article 226 of the Constitution challenge the notification dated 13.1.2003 (Annexure "A") of the State Government in the Agriculture & Co-operation Department declaring the intention of the State Government to denotify the separate market area of APMC, Dascroi and to amalgamate the area of the Dascroi taluka in Ahmedabad District into the market area comprising of the Ahmedabad City taluka including the Municipal Corporation Limits and to regulate the sale and purchase of various specified foodgrains, vegetables, pulses and fruits in the market area comprising the Ahmedabad City taluka (including Ahmedabad Municipal Corporation limits) and Dascroi taluka. By the said notification, the State Government also cancelled the election programme earlier declared by the Director of Agricultural Marketing & Rural Finance.

2. The facts leading to filing of these petitions, briefly stated, are as under :-

2.1 Prior to 2000, the market area of the erstwhile APMC, Ahmedabad comprised of the Ahmedabad City taluka (including Ahmedabad city within the Ahmedabad Municipal Corporation limits) and the Dascroi taluka of Ahmedabad district. By Government notification dated 20.11.2002 issued under Section 52 of the Gujarat Agricultural Produce Markets Act, 1963 (hereinafter referred to as "the APMC Act" or "the Act"), the State Government divided the said market area of the erstwhile APMC, Ahmedabad into two market areas -

(i) the market area comprising of the area of Ahmedabad city taluka (including

Ahmedabad city within the Ahmedabad Municipal Corporation limits); and

(ii) the market area comprising of the area of Dascroi taluka of Ahmedabad district.

2.2 By the Government notification dated 22.2.2001 issued under Section 54 of the Act, the State Government constituted a new market committee for APMC, Ahmedabad nominating members therein as per the provisions of sub-section (2) of Section 54 of the Act. On 2.3.2001, the nominated committee of APMC, Ahmedabad elected the Chairman and Vice-chairman for APMC, Ahmedabad.

2.3 However, such nominated committee was not appointed for APMC, Dascroi. It appears that on 9.3.2001, a Civil Suit was filed in the Ahmedabad City Civil Court challenging the bifurcation of the erstwhile APMC, Ahmedabad and on 19.3.2001, the City Civil Court passed an order of maintenance of status quo on the interim application. That suit came to abate on 28.6.2002 on account of death of the plaintiff. In the meantime, another Civil Suit was filed in the Ahmedabad City Civil Court on 11.6.2002.

2.4 On 19.12.2002, the Director announced the election programme for electing the committee for APMC, Ahmedabad since the tenure of the first nominated committee was expiring on 21.2.2003. On 13.1.2003, the State Government issued the impugned notification declaring its intention to denotify the separate market area of APMC, Dascroi taluka and for amalgamation of the above referred two areas [(i) the market area comprising the Ahmedabad City taluka including the Municipal Corporation Limits and (ii) the area of the Dascroi taluka] into one market area and inviting objections and/or suggestions from all concerned and in view of this development cancelling the aforesaid election programme dated 13.1.2003.

3. Special Civil Application No. 580 of 2003 is filed by the following persons :-

(i) Petitioner Nos. 1, 2 and 4 are agriculturists and members in the erstwhile nominated committee of the erstwhile APMC, Ahmedabad city taluka.

(ii) Petitioner No.3 is a trader in the Ahmedabad city APMC market area.

The petition is filed on behalf of the farmers growing agricultural produce in the market area of Ahmedabad city.

Special Civil Application No. 1703 of 2003 is filed by two agriculturists in Dascroi taluka and a Co-operative Society dispensing agricultural credit to the agriculturists in Dascroi taluka. Petitioner No. 4 is the Sarpanch of one of the villages in Dascroi taluka and is also an agriculturist.

4. When SCA No. 580 of 2003 came up for hearing on 11.2.2003, this Court issued Rule and passed the following order recording the consensual interim arrangement :-

"Learned Addl. Advocate General Mr Kamal Trivedi states that the respondent-State shall not take any final decision pursuant to the notification dated 13.01.03. He further states that on the expiry of the present term of the Ahmedabad Agricultural Produce Market Committee, a senior officer shall be appointed to act as an administrator of the Ahmedabad Agricultural Produce Market Committee till the hearing and final disposal of the petition. Therefore, it is not necessary to consider prayers for interim relief. Learned counsel for the parties are agreeable to the aforesaid arrangement to continue till the hearing and final disposal of the petition."

5. At the hearing of these petitions, Mr KG Vakharia, learned counsel for the petitioners in SCA No.580 of 2003 and Mr PM Thakkar, learned counsel for the petitioners in SCA No.1703 of 2003 have made the following submissions :-

5.1 The State Government does not have any power to amalgamate two market areas under the Act and, therefore, the impugned notification dated 13.1.2003 proposing to amalgamate the two market areas, viz. Ahmedabad city taluka and Dascroi taluka, into one market area is without any authority of law. The provisions of Section 52 of the Act only confer power to denotify or divide a market area. Section 53 provides for the effects of denotification or exclusion of a market area and Section 54 confers power on the State Government to dissolve and constitute market committees on alteration of limits of the market area or divide a market area into two or more separate market areas. But there is no provision in the

Act conferring the power of amalgamation or merger of two market areas into one, or for amalgamation or merger of two APMCs into one APMC.

5.2 The same legislature which has enacted the Gujarat APMC Act, 1963 has also enacted the Gujarat Co-operative Societies Act, 1961 wherein Section 17 specifically provides for amalgamation of Co-operative Societies. Similarly Section 263 of the Gujarat Panchayats Act, 1993 also provides for effect of amalgamation of villages. Absence of such a provision in the Gujarat Agricultural Produce Markets Act indicates the legislative intent that amalgamation or merger of market areas is not permitted under the APMC Act. Reference is also made to Section 44 of the Maharashtra Agricultural Produce Markets Act providing for amalgamation in support of the contention that the legislature has consciously not included any provision for amalgamation or merger of market areas under the Gujarat APMC Act.

5.3 The impugned notification is in violation of the State Government's policy as contained in the circular dated 8.12.1999 (Annexure "B") under which it was decided to constitute an APMC for each taluka in the State.

5.4 Earlier when SCA No.6654 of 2002 was filed for challenging any such action of amalgamation of the two market areas, a statement was made on behalf of the State Government that there was no such proposal and after the statement was made on 1.10.2002, the impugned notification has been issued on 13.1.2003 without any justification for change of opinion.

5.5 On merits, the agriculturists in Dascroi taluka need a separate APMC for themselves and unnecessary hardship will be caused by the proposed amalgamation.

5.6 When the elections to APMC, Ahmedabad city taluka were announced by the Director's notification dated 13.12.2002, the State Government had no authority to set aside such elections and elections ought to be permitted to be proceeded with. Grievance is also made against not nominating a committee for APMC, Dascroi and not holding elections to the APMC, Dascroi.

6. On the other hand, Mr Kamal B Trivedi, learned Addl. Advocate General with Ms Sangita Vishen, learned AGP for the respondent authorities, i.e. State of Gujarat, Director of Agriculture and District Registrar of Co-operative Societies, have made the following

submissions :-

6.1 The APMC Act does not contain any express or implied embargo on amalgamation or merger of market areas. On the contrary, a conjoint and purposive reading of Sections 5, 6(1), 6(5), 52, 53(2) and 54 of the APMC Act indicates that the power to amalgamate two ore more market areas is very much available with the Government. Strong reliance is placed on the decision of the Apex Court in 1995 Suppl.(1) SCC 760 in support of the contention that the power to declare a market area includes the power to amalgamate two market areas. Reliance is also placed on several decisions of the Apex Court in support of the plea for purposive interpretation of statutes.

6.2 The State Government has not taken any final decision and merely a declaration of intention to denotify the separate market area of Dascroi taluka and to amalgamate the two areas is made. Objections and suggestions are invited. It is open to the petitioners to lodge their objections/suggestions before the State Government takes any decision in the matter.

6.3 Reliance is also placed on the decision in AIR 1976 Karnataka 141 in support of the contention that a decision to declare an area as a market area is a policy decision with which the Court will not interfere in writ jurisdiction.

6.4 The power to hold elections includes the power to cancel or postpone the elections. The power of the Director to announce the elections and to conduct elections is subject to the general or special orders of the Government as contemplated by Section 4(1) of the Act. Reliance is placed on the decision in 31 (2) GLR 1010.

7. Mr PK Jani and Mr Shalin Mehta, learned counsel for the contesting respondents claiming to represent agriculturists in the Dascroi taluka and Ahmedabad City taluka have opposed the petitions and submitted that -

7.1 Till the year 2000, Dascroi taluka was always a part of the market area of APMC, Ahmedabad even when Dascroi was a separate taluka from the Ahmedabad city taluka for the last 40 years. When the State Government had issued the notification dated 20.11.2000 for bifurcating the market area of APMC, Ahmedabad into Ahmedabad city taluka area and Dascroi taluka area, many representations were made objecting to such bifurcation

and the market for Dascroi was never established.

7.2 The State Government had, therefore, rightly proposed to amalgamate the two areas and to restore the position as was prevailing for the last more than four decades prior to 2000. The State Government does have the power to amalgamate. In any case, the State Government does have the power under Section 52 of the Act to denotify the Dascroi taluka market area and to include the same in the Ahmedabad city taluka area under Section 6(5) of the Act and, therefore, there is no want of power with the State Government.

7.3 SCA No.580 of 2003 is filed for the purpose of retaining the power which is presently available to a small number of agriculturists in Ahmedabad city taluka so that the agriculturists of the Dascroi taluka do not get an opportunity to participate in the management of the APMC, Ahmedabad for the larger market area which was prevailing prior to 2000.

7.4 Dascroi taluka is geographically surrounding the Ahmedabad city taluka and distance-wise it is convenient to the agriculturists in the Dascroi taluka to go to the market yards of the APMC, Ahmedabad for the larger market area.

7.5 The petitions are premature and, therefore, deserve to be dismissed.

8. Before dealing with the rival submissions, it is necessary to refer to the relevant statutory provisions.

8.1 The Gujarat Agricultural Produce Markets Act, 1963 (hereinafter referred to as "the Act") is a law relating to the regulation of buying and selling of agricultural produce and the establishment of market for agricultural produce in the State of Gujarat. Section 4 provides for appointment of Director of Agricultural Marketing and Rural Finance for exercising the powers conferred and perform functions and duties imposed on him by or under the Act and shall subject to general and special orders of the State Government carry out the purposes of the Act.

8.2 Chapter III of the Act provides for declaration of market area, constitution of markets and establishment of market committees. Sections 5 and 6 contain provisions laying down the procedure for declaration of market areas. The Director of Agricultural Marketing & Rural Finance (hereinafter referred to as "the Director")

is first required to issue a notification declaring his intention of regulating the purchase and sale of such agricultural produce and in such area as may be specified in the notification. The following procedural requirements are prescribed:-

I. Publication :- (Sec.5)

The notification has to be published in the official gazette, a Gujarati newspaper having circulation in the area and also to be circulated in such other manner as may be prescribed;

II. Inviting objections :- (Sec.5)

(a) The notification shall also state that any objection or suggestion received by the Director against such intended declaration received within the period specified in the notification (not being less than one month from the date of publication) shall be considered by the Director;

(b) A copy of the notification is also to be sent to the local authorities functioning in the area specified in the notification with a request to submit their objections and suggestions to the Director.

III. Declaration of Market Area :- (Sec.6(1))

After expiry of the period specified in the notification as aforesaid and after considering the objections and suggestions within the specified period and after holding such inquiry as may be necessary, the Director may declare the area specified in the notification or any portion thereof to be a market area in respect of all or any of the agricultural produce specified in the notification. Such notification under Section 6 is also required to be published in the same manner as the notification under Section 5.

IV. Power to exclude or include :- (Sec.6(5)

Sub-section (5) of Section 6, though forming part of Section 6, confers an independent power on the Director to exclude any area from a market area already specified in the notification under sub-section (1) or, to include an area in a

market area already specified in notification under Sub-section (1). The power of exclusion and inclusion can be exercised either with reference to the area to be excluded from, or included in, an existing market area and such power can also be exercised with reference to the kinds of agricultural produce which shall be regulated or excluded from regulation under the provisions of the Act. For issuance of notification under sub-section (5) of Section 6 also, the same procedure is prescribed as is specified in Section 5 of the Act.

Section 7 provides that for each market area, there shall be a market which shall consist of one principal market yard, sub-market yards, if any, and all markets proper. Sub-section (4) of Section 7 specifies that the market shall be deemed to have been established for any market area with effect from the date on which the principal market yard and market proper are declared for that area.

8.3 Sub-section (1) of Section 9 provides that the Director shall establish a market committee for every market area.

Section 11 provides for constitution of market committee with 14 elected representatives from the constituency of agriculturists and representatives of co-operative marketing societies and holding general licenses in the market area and one member to be nominated by the local authority where the member market yard is situate and two members to be nominated by the State Government. The term of office of a market committee shall, save as otherwise provided in the Act, be four years from the date of its first general meeting. The power is conferred on the State Government to extend such term for a period not exceeding one year in the aggregate.

8.4 In Chapter IX of the Act, Section 52 confers power upon the State Government to declare that a market area shall cease to be such area or divide a market area into two or more separate market areas. The same procedure as laid down in Section 5 is required to be followed either for denotifying the market area or for dividing the market area.

Section 53 provides for effect of denotification or exclusion of market area. Where a market area ceases to be a market area, the market committee or the

nominated committee stands dissolved, the members of the committee/s vacate their office and the unexpended balance of the market committee fund and other properties and liabilities of the market committee vest in the State Government. Sub-section (2) of Section 53 provides that where any area is excluded under Section 6 from a market area for which a market committee has been established and such area is not included in any other market area or declared to be a market area, proportionate fund and property vesting in the market committee, as per the decision of the State Government is to vest in the State Government.

Section 54 confers power on the State Government to dissolve and constitute market committee on alteration of limits of market area. Sub-section (1) thereof provides that when during the term of a market committee, the limits of the market area for which it is established are altered or the market area is divided into two or more separate market areas, the State Government may dissolve the market committee and constitute nominated market committee preferably from the persons who were members of the dissolved market committee. The term of members of such new market committee is not to exceed two years and upon expiry of such period, the market committee is to be reconstituted in the manner provided in Section 11.

Section 55 provides for vesting of property etc. of dissolved market committee in new market committee.

9. A conjoint reading of the aforesaid provisions would indicate that after any area is already declared as a market area under Sub-section (1) of Section 6 of the Act, such are may be denotified under Section 52 and the market area would cease to be such area. Similarly, under sub-section (5) of Section 6 an area may be excluded from out of an existing market area declared under sub-section (1) of Section 6 of the Act. Where such area is excluded under Section 6(5) or ceases to be market area under Section 52, the Government may either include such area into any other existing market area or may not include such area into any other existing market area. If the Government decides to include such area into an existing market area, the provisions of sub-section (5) of Section 6 would come into play as they expressly provide for power to include an area into an existing market area in which case the procedure laid down in Section 5 will have to be followed. On the other hand, if the area which has ceased to be market area or which is excluded from an existing market area is not

included in any other market area nor is it declared to be a market area, under sub-section (2) of Section 53 of the Act, such portion of market committee fund and properties is to vest in the State Government as may be determined by the State Government. When an existing market area is divided into two or more separate market areas, the provisions of Section 54 would come into play. Similarly, when the limits of market area are altered during the term of a market committee, the provisions of Section 54 would come into play empowering the State Government to dissolve the market committee and to constitute a separate market committee for each market area being formed on account of such alteration.

10. The argument of the learned counsel for the petitioners that the Act does not confer any power of amalgamation or merger of two market areas is canvassed only in view of absence of any specific or express power of amalgamation, but a simultaneous exercise of powers under Section 52 denotifying one existing market area and under Section 6(5) of the Act including that area in another existing market area makes it possible for the Government to amalgamate two market areas into one. Over and above the above interpretation flowing from the aforesaid relevant statutory provisions, the construction being placed by us is not merely in consonance with the object of the Act as reflected in the preamble, but also fortified by the decision of the Apex Court in Karnail Singh vs. Darshan Singh, 1995 Supp. (1) SCC 760 wherein the Apex Court was concerned with interpretation of the following provisions of Punjab Gram Panchayat Act, 1952:-

"3. Definitions.- In this Act unless the context otherwise requires, -

....

(q) 'village' means any local area, recorded as a revenue estate in the revenue records of the district in which it is situated"

Section 4 reads thus :

"Sec.4. Demarcation of Sabha area.- (1) Government may, by notification, declare any village or group of contiguous villages with a population of not less than five hundred to constitute one or more sabha areas;

....

(2) Government may, by notification, include any area or exclude any area from the sabha area."

Under Section 5 of the Act, the Government have the power, by a notification published in that behalf, to constitute a panchayat by name in every sabha area.

The Government of Haryana exercised the power under Section 4 for amalgamating gram sabhas of B and H villages and constituted B M H gram sabha. The notification was quashed by the Punjab & Haryana High Court, inter alia, on the ground that there was no such power of amalgamation.

On appeal, the Apex Court inferred the power of amalgamation by placing the following construction on the provisions of Sections 4 and 5 of the Act:-

"By amalgamation of the two revenue estates one gram sabha area may be constituted by a declaration. Section 4(1) intends to operate in that perspective and the second clause of Section 4 appears to operate in that area. Thus considered, we find that in the same revenue estate, depending upon the facts and exigencies for smooth, proper, efficient or convenient administration of the gram sabha area, one or more than one sabha areas could be declared by a notification constituting for each sabha area a gram panchayat for the purpose of the Act. After the constitution of separate gram sabha areas, by operation of sub-section (2), power has been given to the State Government, for the same reasons, again to include or exclude same sabha area or a part thereof from the notified sabha area. In other words, Section 4(2) gives power for the State Government to amalgamate two or more than one sabha areas and to constitute, by a declaration under Section 4(2) a single gram panchayat. In other words, power to constitute a panchayat included power to amalgamate two or more than one sabha areas as one gram sabha."

(emphasis supplied)

Thus, in unmistakable terms, the Apex Court held that the power to constitute a panchayat included power to amalgamate two or more sabha areas as one gram sabha.

11. In view of the above decision, the power of

declaring a market area under sub-section (1) of Section 6 of the APMC Act would have even otherwise included the power to amalgamate two or more market areas. Apart from this, there is express power conferred on the State Government under Section 52 of the Act to denotify a market area and also express power conferred on the State Government under sub-section (5) of Section 6 of the Act to include an area into an existing area. In light of the aforesaid provisions, we have no manner of doubt in holding that the State Government has power to amalgamate two or more market areas.

12. The learned counsel for the petitioners submitted that there is no express provision providing for the consequences of amalgamation of two market areas unlike consequences for denotifying a market area, dividing a market area or exclusion of market area.

It is obvious that when an area is denotified and not included in any other market area, some provision would have to be made for the fund and properties of the market committee of that area and, therefore, under sub-section (2) of Section 53 such fund and properties shall vest in the State Government. However, when there is amalgamation of two market areas, it is obvious that the fund and properties of the committee of the area which is amalgamated would vest in the market committee of the market area with which the other market area is amalgamated. In view of this, it was not necessary for the legislature to make an express provision for dealing with the consequences of amalgamation of two market areas.

13. Mr Vakharia also strenuously contended that when the same legislature has made provision for amalgamation of co-operative societies in Section 17 of the Gujarat Cooperative Societies Act, 1961 and has also provided for amalgamation of villages under Section 263 of the Gujarat Panchayats Act, 1963, absence of any such provision for amalgamation in the APMC Act must be taken as conscious legislative decision not to empower the Government to provide for amalgamation of two market areas.

In our view, the argument is misconceived. As far as cooperative societies are concerned, the concerned cooperative societies have to first pass a resolution by the requisite majority for such amalgamation. It is that decision of the cooperative societies which is merely required to be approved by the authorities under the Act. Such a cooperative society would not be able to pass a resolution to the effect that it ceases to exist and

thereafter another resolution by a non-existent society that it would be included or merged into another cooperative society. Hence, an express provision for amalgamation of co-operative societies would be necessary.

However, in case of market areas, it is not for the market committee to decide whether the market area shall be denotified or not. It is for the Government in exercise of the powers under Section 52 of the Act to decide whether a market area is to be denotified. Once the market area is denotified, the Government may either not include it in any other market area in which case the consequences provided under Section 53 would ensue but in case the Government decides to include such market area into another existing market area under sub-section (5) of Section 6, as already discussed earlier, the amalgamation would take place. In view of the difference in the nature and status of the bodies governed by the APMC Act on the one hand and the cooperative societies on the other hand, the legislative intention sought to be inferred by Mr Vakharia cannot be presumed.

In this connection, it is necessary to refer to the decision of the Apex Court in Harshad S Mehta vs. State of Maharashtra, AIR 2001 SC 3774 wherein similar contention was raised. Section 307 of the Code of Criminal Procedure confers powers on a Magistrate to grant pardon. The question was whether Special Court constituted under Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 had such power. There was no express provision in the said Act of 1992 conferring such power but all the powers of the Magistrate and the Court of Sessions are conferred on the Special Court. The contention urged was that the Presiding Officer of the Special Court is neither a Magistrate nor a Sessions Judge and that the legislature which had enacted the Code of Criminal Procedure, 1973 and expressly conferred such power under Section 307 of the Code chose not to confer such power on the Special Court under the 1992 Act and, therefore, the legislative intention must be inferred that the legislature did not intend to confer such power on the Special Court. Rejecting the said contention, the Apex Court made, inter alia, the following observations :-

"52. There is no provision in the Act which negates the power of the Special Court to grant pardon. The Special Court has power to grant pardon at any stage of the proceedings. The power under Section 307 cannot be denied merely

> because no commitment of the case is made to the Special Court. Learned Solicitor General, in our view, rightly contends that the other statutes are only an external aid to the interpretation and to rely upon the omission of a provision which is contained in another different enactment, it has to be shown that two Acts are similar which is not the position here. The scheme of two Acts is substantially different as has been earlier noticed by us. It is also evident from Fernandes's case as well."

(emphasis supplied)

The Cooperative Societies Act and the Gujarat Panchayats Act provide for and deal with entirely different types of bodies established for looking after different needs altogether. Hence, the provisions of the APMC Act cannot be interpreted with reference to those enactments.

14. As regards reliance placed on the provisions of Section 44 of the Maharashtra APMC Act containing express provision for amalgamation, since that enactment is made by another legislature altogether, no such argument is available while construing the provisions of the Gujarat Agricultural Produce Markets Act, 1963. Moreover, we have already discussed earlier that under the provisions of the Gujarat APMC Act also, the power of amalgamation is available.

15. We are, therefore, of the view that there is no provision in the Gujarat APMC Act which negates the power of the State Government to amalgamate two existing market areas which power can be easily inferred on conjoint reading of Sections 52, 53, 54 and 6(5) of the Act. In view of this finding, the challenge to the notification dated 13.1.2003 at Annexure "A" to the petition on the ground of want of authority or jurisdiction has to be turned down.

16. The other challenges to the said notification are obviously premature at this stage because the Government has invited objections and suggestions to the proposed denotification of Dascroi Taluka Market Area and the proposed inclusion of Dascroi Taluka area into the existing Ahmedabad city Taluka Market Area, It is open to the petitioners to lodge their objections against, or make their suggestions about, the proposed actions. For this reason, we have not examined either the petitioners' contentions challenging such proposed

denotification/amalgamation nor have we examined the justification sought to be given by the learned counsel for the contesting respondents who have supported the proposed denotification/amalgamation of the Dascroi Taluka market area into the Ahmedabad city taluka market area.

17. As regards challenge to the notification dated 13.1.2003 cancelling the election program dated 19.12.2002 issued by the Director, it is obvious that if the proposed denotification of the Dascroi taluka market area and the proposed amalgamation of the said area into Ahmedabad city taluka market area takes place, the question of holding elections to the APMC for the Ahmedabad City Taluka without the Dascroi Taluka area would not arise. In fact, the APMC elected by the voters in the Ahmedabad City Taluka Market Area would not be representative of the APMC for Ahmedabad city taluka and Dascroi taluka market areas taken together.

18. However, the learned counsel for the petitioners submitted that once the election program was issued by the Director, it was not open to any authority to cancel such program.

The learned Additional Advocate General has invited our attention to the provisions of Section 21 of the Bombay General Clauses Act, 1904, which reads as under:-

"21. Power to make to include power to add to, amend, vary or rescind, orders, etc.- Where, by any Bombay Act, or Gujarat Act a power to issue notifications, orders, rules, bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to, add to amend, vary or rescind any notifications, orders, rules or bye-law, so issued."

The power to issue a notification, therefore, includes the power to rescind such notification.

In Ashoksinh G Jadeja vs. DB Brahmbhatt, 31 (2) GLR 1010, the same provision of the Bombay General Clauses Act was relied upon to hold that the authority competent to direct holding of an election can also cancel or postpone the election.

19. The learned counsel for the petitioners would, however, submit that the election program was announced

by the Director and, therefore, the State Government could not have cancelled the said program. We do not find any substance in the said contention because sub-section (1) of Section 4 empowering the State Government to appoint an officer to be the Director of Agricultural Marketing and Rural Finance for exercise of the powers and performance of functions and duties conferred by or imposed under the Act further provides that the Director is to carry out purposes of the Act, "subject to special, general or special orders as the State Government may pass". In view of this specific statutory provision, in the facts and circumstances of the case, we are of the view that the State Government notification declaring the intention to denotify Dascroi Taluka Market Area and also declaring the intention to include or amalgamate the said area into the Ahmedabad City Taluka Area could also rightly provide for cancellation of the election program for the Ahmedabad City Taluka Market Area without the Dascroi Taluka Area proposed to be included therein.

20. In view of the aforesaid discussion, we do not find any merit in the contentions raised on behalf of the petitioners regarding the legality of the Government notification dated 13.1.2003 at Annexure "A" to the petition. We, however, make it clear that it will be open to the petitioners to lodge their objections against, or make their suggestions in respect of, the intended or proposed denotification of the Dascroi Taluka Market Area and amalgamation thereof into the Ahmedabad City Taluka Market Area so as to reach the State Government within one month from today, that is to say, to reach the State Government by 9th August 2004. The objections/suggestions received by the State Government within the aforesaid time limit shall be considered in accordance with law.

21. Subject to the aforesaid observations and direction, the petitions are dismissed. Rule is discharged in each petition with no order as to costs.

The respondents are relieved from the statement which was earlier made on their behalf on 11.2.2003 regarding interim arrangement during pendency of the petition.

22. As the petitions are dismissed, the Civil Applications do not survive and the same are disposed of accordingly.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/zgs-